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LKP & ANOR v. PENDAFTAR BESAR KELAHIRAN DAN KEMATIAN, MALAYSIA

HIGH COURT MALAYA, SHAH ALAM
FAIZAH JAMALUDIN J
[ORIGINATING SUMMONS NO: BA-24-25-08-2019]
31 JANUARY 2023

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Abstract – *An adopted child born after Malaysia Day who was registered as a Malaysian citizen, albeit based on false information given by her adoptive parents, meant that it would have been legally impossible for her to have acquired within one year after her birth the citizenship of any other country by virtue of any provision corresponding to s. 1(c) of Part II of the Second Schedule of the Federal Constitution ('FC') or otherwise. Thus, the child was a citizen of Malaysia by operation of law pursuant to art. 14(1)(b) and s. 1(e) and s. 2(3) of Part II of the Second Schedule of the FC.*

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CONSTITUTIONAL LAW: *Citizenship – Citizenship by operation of law – Malaysian citizen couple adopted child – Identity of biological parents unknown – Child registered as Malaysian citizen based on false information and was issued birth certificate stating child as 'citizen' – Whether legally possible for child to acquire within one year of birth citizenship of any other country – Whether child citizen of Malaysia by operation of law pursuant to art. 14(1)(b) and s. 1(e) and s. 2(3) of Part II of Second Schedule of Federal Constitution – Whether child ought to be registered as citizen of Malaysia*

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The first and second plaintiffs, Malaysian citizens, were husband and wife and joint litigation representatives and adopted parents of the child ('LSY'). LSY was born on 3 July 2003 at Puchong Maternity Centre. The first plaintiff had taken LSY from an Indian lady residing in Klang shortly after her birth. The first plaintiff had registered LSY at the National Registration Department ('JPN') as the plaintiffs' biological child. The defendant had issued a birth certificate under the Births and Deaths Registration Act 1957 ('BDRA'). The first and second plaintiffs were named as LSY's father and mother respectively on the said birth certificate. Subsequently, the defendant discovered that the plaintiffs were not LSY's biological parents when LSY, at 12 years old, presented herself at JPN during her application for a national identity card. Following the discovery, the defendant amended LSY's birth certificate where the details of LSY's biological parents were stated as 'no information obtained' and her nationality as 'non-citizen'. Subsequent to the amendment, the plaintiffs applied to the Sessions Court to adopt LSY, and the adoption order was granted. The defendant then issued LSY with a new birth certificate under the Adoption Act 1952 ('AA') where the first and

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second plaintiffs were named as LSY's father and mother respectively, and her citizenship status stated as 'non-citizen'. The plaintiff then applied to the Federal Government under art. 15A of the Federal Constitution ('FC') for Malaysian citizenship for LSY, which was rejected. The identity of LSY's biological parents remained unknown to date. The first plaintiff had stated that the Indian lady had told him that LSY was born to Malaysian Indians. During LSY's adoption proceedings, the plaintiff had placed an advertisement in the New Straits Times and wrote to Private Healthcare Practice Control Group ('CKAPS') under the Ministry of Health seeking information relating to the birth of LSY and/or LSY's biological parents, but received no reply. The plaintiffs sought from this court judgment that LSY was a Malaysian citizen by operation of law and prayed for the following declaratory orders (encl. 49): (i) that LSY was born of a mother who was a permanent resident in Malaysia pursuant to s. 19B of Part III of the Second Schedule of the FC ('prayer (1)'); (ii) that LSY was a citizen of Malaysia by operation of law pursuant to art. 14(1)(b) and s. 1(a) of Part II of the Second Schedule of the FC read with s. 19B of Part III of the Second Schedule of the FC ('prayer 2'); (iii) in the alternative, that LSY was a citizen of Malaysia by operation of law by virtue of her lawful adoption by the plaintiffs pursuant to the adoption order made by the Sessions Court, read with ss. 9 and 25A of the AA and art. 14(1)(b) and s. 1(a) of Part II of the Second Schedule of the FC ('prayer (3)'); (iv) that LSY was a citizen of Malaysia by operation of law pursuant to art. 14(1)(b) and s. (1)(e) and s. 2(3) of Part II of the Second Schedule of the FC; and (v) that LSY's birth certificate signed by the defendant which registered LSY as a non-citizen instead of a citizen of Malaysia was an unlawful violation of LSY's rights as a citizen of Malaysia.

Held (declaring adopted child as citizen of Malaysia):

(1) Pursuant to s. 19B of Part III of the Second Schedule of the FC, unless the contrary is shown, any newborn child found exposed in any place shall be presumed to have been born to a mother who is permanently resident at that place. The first plaintiff stated that when he took custody of the baby, LSY's umbilical cord was still attached to her and because of this, he believed that LSY was abandoned when she was born at Puchong Maternity Centre. The first plaintiff was not an expert specifically skilled in science of medicine – he was not a medical doctor or a health professional nor was he an expert in child welfare. Accordingly, pursuant to s. 45 of the Evidence Act 1950, the first plaintiff's belief, that because LSY's umbilical cord was still attached when he took her, meant that she was abandoned, was not a relevant fact and must therefore be disregarded by this court in its determination of the facts in this case. The plaintiffs did not provide any evidence in support of the first plaintiff's averment. The plaintiffs failed to prove,

A on a balance of probabilities, that LSY was abandoned at birth or that she was a 'newborn child found exposed' at Puchong Maternity Centre. (paras 17, 28, 30, 31, 34 & 35)

(2) As this court found that LSY was not an abandoned child at birth, it followed that the presumption under s. 19B of Part III of the Second B Schedule of the FC that LSY was born to a mother permanently resident in Malaysia could not be made. This court could not make a declaration that LSY was born to a mother who was permanently resident in Malaysia pursuant to s. 19B of Part III of the Second Schedule of the FC. This court also could not make a declaration that LSY was a citizen C of Malaysia pursuant to art. 14(1)(b) and s. 1(a) of Part II of the Second Schedule of the FC read with s. 19B of Part III of the Second Schedule of the FC. Accordingly, the prayers (1) and (2) of encl. 49 were dismissed. (paras 36-39)

(3) The question of who was LSY's parents must be considered at her birth, D and not after her legal adoption by the plaintiffs or during this application. The presumption of genuineness under s. 79 of the Evidence Act 1950 does not amount to conclusive proof that 'parents' on a post-adoption birth certificate issued under the AA are 'parents' for the purposes of art. 14(1)(b) and s. 1(a) of the Second Schedule of the E FC. Further, s. 9 of the AA does not construe or deem an adopted child as a child born to the adopter in lawful wedlock for purposes of art. 14(1)(b) and s. 1(a) of Part II of the Second Schedule, Part II of the FC. This court did not find that LSY was a citizen by operation of law by virtue of her lawful adoption pursuant to the adoption order read F with ss. 9 and 25A of the AA and art. 14(1)(b) and s. 1(a) of Part II of the FC. Accordingly, the plaintiffs' prayer (3) of encl. 49 was dismissed. (paras 45, 48, 49, 52 & 53)

(4) LSY was born after Malaysia Day. She was registered as a Malaysian citizen by the defendant in the register under the BDRA based on false G information provided by the first plaintiff that LSY was the plaintiffs' biological child. The defendant had issued LSY a birth certificate under the BDRA which stated that she was a 'citizen'. The fact that she was registered by the defendant after her birth as a Malaysian citizen, *albeit* based on false information provided by the first plaintiff, meant that it H would have been legally impossible for her, to have acquired within one year after her birth, the citizenship of any other country by virtue of any provision corresponding to s. 1(c) of Part II of the Second Schedule of the FC or otherwise. Therefore, LSY, who was a Malaysian citizen since her birth until it was revoked by the defendant when she was 12 years old, could not have acquired and did not acquire the citizenship of any I other country within one year from her birth. Thus, she was a citizen

of Malaysia by operation of law, pursuant to art. 14(1)(b) and s. 1(e) and s. 2(3) of Part II of the Second Schedule of the FC. It was hereby ordered that the defendant register LSY as a citizen of Malaysia and reissue her birth certificate stating that her citizenship status on the birth certificate as 'warganegara'. (paras 55-61)

Case(s) referred to:

CCH & Anor v. Pendaftar Besar Bagi Kelahiran Dan Kematian Malaysia [2022] 1 CLJ 1 FC ***(refd)***

CCH & Anor v. Pendaftar Besar Kelahiran Dan Kematian Malaysia [2019] 1 LNS 1463 HC ***(refd)***

CTEB & Anor v. Ketua Pengarah Pendaftaran Negara, Malaysia & Ors [2021] 6 CLJ 471 FC ***(refd)***

Madhuvita Janjara Augustin (Suing Through Next Friend, Margaret Louisa Tan) v. Augustin Lourdsamy & Ors [2018] 4 CLJ 758 CA ***(refd)***

Samuel Duraisingh & Anor v. Pendaftar Besar Kelahiran Dan Kematian, Malaysia & Another Case [2019] 1 LNS 1474 HC ***(refd)***

Syed Abu Bakar Ahmad v. PP [1984] 1 CLJ 80; [1984] 1 CLJ (Rep) 368 FC ***(refd)***

Tenaga Nasional Bhd v. Panareno Sdn Bhd; Vital Projects Sdn Bhd (Third Party) & Semantra No-Dig Engineering Sdn Bhd (Fourth Party) [2019] 4 CLJ 239 HC ***(refd)***

Legislation referred to:

Adoption Act 1952, ss. 9(1), (2), (3), (4), (5), (6), (7), (8), (9), 25, 25A
Births and Deaths Registration Act 1957, s. 37B
Courts of Judicature Act 1964, s. 15(2)
Evidence Act 1950, ss. 45, 79, 101, 102
Federal Constitution, arts. 14(1)(a), (b), (c), (e), (2), (3), 14(b), 15A, 19B Part III Second Schedule

For the plaintiffs - Eric Toh Kah Yung & Wong Chee En; M/s Mah Weng Kwai & Assocs
For the defendant - Krishna Priya Veenagopal FC; AG's Chambers

Reported by Suhainah Wahiduddin

JUDGMENT

Faizah Jamaludin J:

Application

[1] The first and second plaintiffs are the joint litigation representatives and the adoptive parents of the child ("LSY"). They seek from this court judgment that LSY is a Malaysian citizen by operation of law. In this judgment, the plaintiffs and the child are referred to by their acronyms and details of the child's birth certificates are redacted pursuant to the discretion conferred on this court by s. 15(2) of the Courts of Judicature Act 1964.

[2] The plaintiffs have prayed for the following declaratory orders in their amended originating summons (encl. 49):

A (i) that LSY is born of a mother who is a permanent resident in Malaysia pursuant to s. 19B of Part III of the Second Schedule of the Federal Constitution ("FC");

(ii) that LSY is a citizen of Malaysia by operation of law pursuant to art. 14(1)(b) and s. (1)(a) of Part II of the Second Schedule of the FC read
B with s. 19B of Part III of the Second Schedule of the FC;

(iii) in the alternative to paras. 1 and 2 above, that LSY is a citizen of Malaysia by operation of law by virtue of her lawful adoption by the plaintiffs pursuant to the adoption order dated 17 June 2018 made by the Shah Alam Sessions Court, read with ss. 9 and 25A of the Adoption
C Act 1952 ("AA 1952") and art. 14(1)(b) and s. (1)(a) of Part II of the Second Schedule of the FC;

(iv) that LSY is a citizen of Malaysia by operation of law pursuant to art. 14(1)(b) and s. (1)(e) and s. 2(3) of Part II of the Second Schedule
D of the FC; and

(v) that LSY's birth certificate (Register No.: 000XXXX, Serial No.: 00XXXXA) dated 6 August 2016 signed by the defendant which registers LSY as a non-citizen (bukan warganegara) instead of a citizen of Malaysia is an unlawful violation of LSY's rights as a citizen of
E Malaysia.

[3] The plaintiffs also seek the following consequential orders:

(i) that the defendant reissues the birth certificate (Register No.: 000XXXX, Serial No.: 00XXXXA) dated 6 August 2016 and registers
F LSY as a citizen of Malaysia within 14 days from the date of service of this order on the defendant; and

(ii) that the requirement of personal service of this order be dispensed with and that service of this order be effected on the National Registration Department of Malaysia by way of registered post.

G **Salient Facts**

[4] The plaintiffs are Malaysian citizens. They are husband and wife.

[5] The plaintiffs are not LSY's biological parents. LSY was born on 3 July 2003 at Puchong Maternity Centre. The first plaintiff had taken LSY
H from an Indian lady residing in Klang shortly after her birth.

[6] Nonetheless, the first plaintiffs had registered LSY at the National Registration Department ("JPN") as the plaintiffs' biological child. Based on the information provided by the first plaintiff, the defendant had issued a birth certificate registration no. BEXXXXX under the Births and Deaths
I Registration Act 1957 ("BDRA 1957"). The first and second plaintiffs were named as LSY's father and mother respectively on the said birth certificate.

[7] The fact that the plaintiffs are not LSY's biological parents was discovered by the defendant when LSY, at 12 years old, presented herself at JPN during her application for a national identity card. The plaintiffs are ethnically Chinese. LSY has been described as "dark skinned" in the documents filed in this application.

[8] Following the discovery that the plaintiffs are not LSY's biological parents, the defendant amended LSY's birth certificate where the details of LSY's biological parents were stated as 'maklumat tidak diperolehi' (no information obtained) and her nationality as 'bukan warganegara' (non-citizen).

[9] Subsequent to the amendment, the plaintiffs applied to the Shah Alam Sessions Court to adopt LSY. The Sessions Court granted the adoption order on 17 June 2016.

[10] Upon the grant of the adoption order, the defendant issued LSY with a new birth certificate (Register No.: 000XXXX, Serial No.: 00XXXXA) dated 6 August 2016 under the AA 1952, where the first and second plaintiffs were named as LSY's father and mother respectively and her citizenship status stated as 'bukan warganegara' (non-citizen).

[11] The plaintiff then applied to the Federal Government under art. 15A of the FC for Malaysian citizenship for LSY. The application was rejected on 18 February 2019.

[12] The identity of LSY's biological parents remains unknown to date. The first plaintiff had stated that the Indian lady had told him that LSY was born to Malaysian Indians at Puchong Maternity Centre. The plaintiff had attempted to find LSY's biological parents. During LSY's adoption proceedings, the plaintiff had placed an advertisement in the New Straits Times on 30 January 2016, and the plaintiff's solicitors wrote to Private Healthcare Practice Control Group ("CKAPS") under the Ministry of Health seeking information relating to the birth of LSY and/or LSY's biological parents. There has been no reply to the advertisement or from CKAPS.

Analysis And Findings Of Court

[13] In accordance with art. 14(b) of the FC, every person who is born on or after Malaysia Day and has any of the qualifications specified in Part II of the Second Schedule of the FC is a citizen of Malaysia by operation of law. Article 14(b) of the FC reads:

> [14] Citizenship by operation of law
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> (1) Subject to the provisions of this Part, the following persons are citizens by operation of law, that is to say:
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> (b) every person born on or after Malaysia Day, and having any of the qualifications specified in Part II of the Second Schedule.

[14] It is not disputed that LSY was born within the Federation after Malaysia Day.

[15] To be a citizen of Malaysia by operation of law, she must have at least one of the qualifications specified in Part II of the Second Schedule of the FC.

Does LSY Have Any Of The Qualifications Specified In Part Ii Of The Second Schedule Of The FC?

[16] For a person born in Malaysia on or after Malaysia Day to be a citizen by operation of law, one of the qualifications is that at least one of his/her parents at the time of birth was either a citizen or permanently resident in Malaysia. Section 1(a) of the Part II of the Second Schedule of the FC states:

> 1. Subject to the provisions of Part III of this Constitution, the following persons born on or after Malaysia Day are citizens by operation of law, that is to say:
>
> (a) every person born within the Federation of whose parents one at least is at the time of the birth either a citizen or permanently resident in the Federation.

Was LSY Found Abandoned At Birth?

[17] Pursuant to s. 19B of Part III of the Second Schedule of the FC, unless the contrary is shown, any newborn child found exposed in any place shall be presumed to have been born to a mother who is permanently resident at that place. Section 19B reads:

> 19B. For the purposes of Part I or II of this Schedule any newborn child found exposed in any place shall be presumed, until the contrary is shown, to have been born there of a mother permanently resident there; and if he is treated by virtue of this section as so born, the date of the finding shall be taken to be the date of the birth.

[18] The Federal Court in its recent decision in *CCH & Anor v. Pendaftar Besar Bagi Kelahiran Dan Kematian Malaysia* [2022] 1 CLJ 1; [2022] 1 MLJ 71; [2022] 1 AMR 1 ("*CCH*") held that once it is shown that a newborn child is found exposed, or abandoned at any place, two things are presumed: (i) the child was born to a mother who was permanently resident at the place where the finding was made; and (ii) the date of the finding is taken as the date of the birth.

[19] After the Federal Court's decision in *CCH*, the plaintiffs applied in encl. 30 to amend their originating summons to include prayers (1) and (2). In their application, the plaintiffs stated that the proposed amendments were necessary and were made in light of the decision of the Federal Court in *CCH*. I allowed their application, and the originating summons was accordingly amended.

[20] In their amended originating summons, the plaintiffs seek to persuade this court that LSY was born and abandoned at Puchong Maternity Centre, and therefore, pursuant to s. 1(a) of Part II and s. 19B of the Part III of the Second Schedule of the FC, she was born to a mother who is permanently resident in Malaysia.

[21] However, the facts in this case are different from that in *CCH*. It was an accepted fact in *CCH* that the child was an abandoned child. Tengku Maimun Tuan Mat CJ in delivering the judgment of the Federal Court said:

> [55] In the present case, we took pains to emphasise that throughout the course of this case, it has been an accepted fact that the child is an abandoned child who was born in Hospital Universiti Kebangsaan Malaysia, Cheras. This fact was acknowledged in the adoption order and in the third birth certificate.

[22] Since the judicial review of the respondent's decision at the High Court, the facts in *CCH* had consistently been that the child was born and abandoned at Hospital Universiti Kebangsaan Malaysia, Cheras: see the High Court's judgment in *CCH & Anor v. Pendaftar Besar Kelahiran Dan Kematian Malaysia* [2019] 1 LNS 1463.

[23] Whereas in this case, it is not an accepted fact that LSY was an abandoned child, *ie*, that she was a newborn child "found exposed in any place".

[24] The plaintiffs desire this court to declare that LSY was born of a mother who is permanently resident in Malaysia pursuant to s. 19B of Part III of the Second Schedule of the FC. Therefore, under ss. 101 and 102 of the Evidence Act 1950, the burden is on the plaintiffs to prove on a balance of probabilities that LSY was an abandoned child – that she was a newborn found exposed at birth at Puchong Maternity Centre.

[25] In the plaintiffs' affidavit in support, the first plaintiff stated that LSY was born at Puchong Maternity Centre on 3 July 2003. This fact was included in the adoption order and LSY's birth certificate issued under the AA 1952. The first plaintiff had averred that he took LSY as a newborn from an Indian lady in Klang. He said that the Indian lady had informed him that LSY's biological parents are Malaysian Indians and that they did not want her.

[26] However, in contrast to his averment in his affidavit, the first plaintiff in his recorded statement to the Bahagian Siasatan dan Penguatkuasaan, JPN Putrajaya on 7 July 2022, made pursuant to an inquiry by the defendant under s. 37B of the BDRA 1957 ("recorded statement"), stated that he had obtained LSY from an elderly Chinese lady known as "aunty", who lives in Jalan Peel Cochrane near the first plaintiff's uncle's house. He said that the Chinese aunty had brought him to a squatter area in Klang, Selangor where

most of its residents are of Indian descent. The first plaintiff in his recorded statement stated, among others, "Saya ambil subjek dari area Klang bersama makcik itu … Saya hanya ambil bayi masa bayi tidak silap saya lahir sahaja keturunan India dari keluarga India Malaysia."

[27] In his recorded statement, the first plaintiff further stated that he was informed by the Chinese aunty that LSY was born at Puchong Maternity Centre, that all the paperwork with regards to the registration of LSY's birth was managed by the Chinese aunty, and that he went to JPN Petaling Jaya to register LSY's birth and the Chinese aunty waited for him whilst he did so.

[28] In the plaintiff's afidavit jawapan tambahan affirmed on 22 August 2022 (encl. 52) filed after this court had allowed the amendment to their originating summons, the first plaintiff stated that when he took custody of the baby, LSY's umbilical cord was still attached to her. He said that because of this, he believes that LSY was abandoned when she was born at Puchong Maternity Centre.

[29] Under s. 45 of the Evidence Act 1950, where a court has to "form an opinion upon a foreign law or of science or art", it may accept as relevant facts the opinion of an expert *ie*, a person "specially skilled in that foreign law, science or art." Expert evidence is only admissible to furnish the court with scientific or other information, which is likely to be outside the experience and knowledge of the judge: see *Syed Abu Bakar Ahmad v. PP* [1984] 1 CLJ 80; [1984] 1 CLJ (Rep) 368; [1984] 2 MLJ 19), FC; *Tenaga Nasional Bhd v. Panareno Sdn Bhd; Vital Projects Sdn Bhd (Third Party) & Semantra No-Dig Engineering Sdn Bhd (Fourth Party)* [2019] 4 CLJ 239; [2019] 11 MLJ 796; HC.

[30] The first plaintiff is not an expert specifically skilled in science or medicine – he is not a medical doctor or a health professional. Nor is he an expert in child welfare.

[31] Accordingly, pursuant to s. 45 of the Evidence Act 1950, the first plaintiff's belief, that because LSY's umbilical cord was still attached when he took her, means that she was abandoned, is not a relevant fact and must, therefore, be disregarded by this court in its determination of the facts in this case. Moreover, the first plaintiff's claim that LSY's umbilical cord was still attached when he took her from the Indian lady is a bare averment. The plaintiffs did not provide any evidence to support the first plaintiff's averment. They did not file any affidavits by the Chinese aunty and/or the Indian lady to confirm his said averment.

[32] The second plaintiff in her recorded statement dated 7 January 2022 confirmed that it was the first plaintiff who went with the Chinese aunty to take the baby from Klang. She said that she did not go with them as she was working. She stated:

Makcik yang bagitau ada satu bayi berkulit hitam dari keluarga India Malaysia yang tidak mahu bayi yang dilahirkan itu. Dan saya dan suami terima bayi dan tidak kisah apa warna dan keturunan bayi, sebab makcik bagi tahu dari keluarga Malaysia.

[33] The plaintiffs have proven that LSY was born within the Federation of Malaysia at Puchong Maternity Centre on 3 July 2003. This fact is not disputed by the defendant – it is reflected in LSY's birth certificates issued by the defendant under the BDRA 1957 and under the AA 1952 respectively.

[34] Nonetheless, this court finds that the plaintiffs have failed to prove on a balance of probabilities that LSY was abandoned at birth. In my considered judgment, for the reasons discussed above, the first plaintiff's averment that the Indian lady from whom he took LSY in Klang informed him that LSY was born at Puchong Maternity Centre to Indian Malaysians or that LSY's umbilical cord was attached when he took her, does not prove on a balance of probabilities that LSY was an abandoned at birth or that she was a "newborn child found exposed" at Puchong Maternity Centre.

[35] Accordingly, this court finds that LSY does not fall within s. 19B of Part III of the Second Schedule of the FC.

Was LSY Born To A Mother Permanently Resident In Malaysia?

[36] As this court has found that LSY was not an abandoned child at birth, it follows, that the presumption under s. 19B of Part III of the Second Schedule of the FC that LSY was born to a mother permanently resident in Malaysia cannot be made.

[37] Therefore, this court finds that the plaintiffs have failed to prove that LSY was born to a mother permanently resident in Malaysia.

[38] Based on these findings, this court cannot make a declaration that LSY was born to a mother who is permanently resident in Malaysia pursuant to s. 19B of Part III of the Second Schedule of the FC. This court also cannot make a declaration that LSY is a citizen of Malaysia pursuant to art. 14(1)(b) and s. 1(a) of Part II of the Second Schedule of the FC read with s. 19B of Part III of the Second Schedule of the FC.

[39] Accordingly, the prayers (1) and (2) of encl. 49 are dismissed.

Is LSY A Citizen Of Malaysia By Operation Of Law By Virtue Of Her Lawful Adoption Under The Adoption Order Made By The Sessions Court?

[40] The plaintiffs' case, in the alternative, is that LSY is a citizen by operation of law by virtue of her lawful adoption pursuant to the Adoption Order read with ss. 9 and 25A of the AA 1952 and art. 14(1)(b) and s. 1(a) of Part II of the Second Schedule of the FC.

[41] Learned counsel for the plaintiffs, Mr Eric Toh, argues that LSY's birth certificate issued by the defendant under the AA 1952 (referred to the plaintiff's written submission as "post-adoption birth certificate") is sufficient to support a *prima facie* case that LSY was born in Malaysia and was not born a citizen of any other country within one year from 3 July 2003.

[42] Mr Toh sought to persuade this court that the word "parent" in s. 1(a) of Part II of the Second Schedule of the FC includes the plaintiffs who are LSY's lawful and adoptive parents as stated in her post adoption birth certificate pursuant to s. 25 of the AA 1952. He submitted that LSY's post-adoption birth certificate is conclusive proof and conclusive evidence that LSY was born in Malaysia and that the plaintiffs are her parents for all purposes. Mr Toh relied on the Court of Appeal's decision in *Madhuvita Janjara Augustin (Suing Through Next Friend, Margaret Louisa Tan) v. Augustin Lourdsamy & Ors* [2018] 4 CLJ 758; [2018] 1 MLJ 307; [2017] 8 AMR 436 ("*Madhuvita*") as authority to support his argument.

[43] At the time the plaintiffs filed their written submissions in September 2020, *Madhuvita* was still good law. However, the Federal Court in its majority decision in *CTEB & Anor v. Ketua Pengarah Pendaftaran Negara, Malaysia & Ors* [2021] 6 CLJ 471; [2021] 5 AMR 661; [2021] 4 MLJ 236 ("*CTEB*") delivered in May 2021, rejected the proposition made by the Court of Appeal in *Madhuvita* that the legitimacy of the child is to be considered at the time of the application for citizenship and not at birth. Rohana Yusof PCA, delivering the Federal Court's majority decision stated:

> [68] With respect, I am not in agreement with *Madhuvita* in relation to the finding that the legitimacy or otherwise of a child is to be considered at the time of the application.

[44] The Federal Court in its majority decision in *CTEB* held that for purposes of art. 14(1)(b) and s. 1(a) of Part II of the Second Schedule of the FC, the word "parents" means the child's parents at the time of birth.

[45] As *Madhuvita* is no longer good law, the question of who is LSY's parents must be considered at her birth, and not after her legal adoption by the plaintiffs or during this application.

[46] The Federal Court in *CTEB* had referred to *Samuel Duraisingh & Anor v. Pendaftar Besar Kelahiran Dan Kematian & Another Case* [2019] 1 LNS 1474; [2019] 7 AMR 482; [2019] MLJU 1688, HC ("*Samuel Duraisingh*") – a case in which I had occasion to consider whether two adopted children are citizens of Malaysia by operation of law under the FC by reason of their adoption. The adoptive parents in *Samuel Duraisingh* had similarly argued that the children were citizens of Malaysia by virtue of their birth in

Malaysia pursuant to the adoption orders made by the Sessions Court read with ss. 9 and 25A of the AA 1952 and art. 14(1)(b) and s. 1(a) of Part II of the Second Schedule of the FC.

[47] A post-adoption birth certificate is issued by the defendant after the adoption of a child under the AA 1952. The certificate does not state who the child's parents are at his birth. Instead, it states who are the adopted parents of the child: see s. 25A(2) and the Second Schedule of the AA 1952. As I had held in my judgment in *Samuel Duraisingh*.

> [56] The AA 1952 and the BDRA 1957 are two separate and distinct statutes. The AA 1952 regulates the registration of entries in the Adoption Children Register as directed in adoption orders issued by the High Court or the Sessions Court. The Defendant establishes and maintains the Adoption Children Register and the Register of Birth Certificates under the AA 1952. S.25A(2) states that the Defendant is to issue a birth certificate in respect of a child in the form set out in the Second Schedule of the AA 1952 upon application of an adoptive parent or both adoptive parents and upon payment of a fee.
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> [57] Whereas the BDRA 1957 governs, among others, the entry of the birth of a child in the Register of Births, Deaths and Presumed Deaths kept and maintained by the Defendant under the BDRA 1957. A birth certificate issued under the BDRA 1957 is a certificate of birth given by the Defendant to the informant at the time of registration of the child's birth.
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> [58] Accordingly, for these reasons, I respectfully disagree with the Plaintiffs' contention that once a pre-adoption birth certificate issued under the BDRA 1957 has been surrendered and a post-adoption birth certificate issued under the AA 1952, s. 33(1) of the BDRA 1957 refers to the same post-adoption birth certificate issued under the AA 1952.

[48] For the above reasons and the Federal Court's majority decision in *CTEB*, I find in this instant case (as I did in *Samuel Duraisingh*) that the presumption of genuineness under s. 79 of the Evidence Act does not amount to conclusive proof that "parents" on a post-adoption birth certificate issued under the AA 1952 are "parents" for the purposes of art. 14(1)(b) and s. 1(a) Second Schedule of the FC. I had held in *Samuel Duraisingh*.

> [64] Both the provisions in s. 33(1) of the BDRA 1957 and s. 25A(6) of the AA 1952 dovetails with s. 79 of the Evidence Act 1950. The function and purpose of the provisions in s. 33(1) of the BDRA 1957 and s. 25A(6) of the AA 1952 is to enable the courts, pursuant to s. 79 of the Evidence Act 1950, to presume that birth certificates and copies of birth certificates duly certified by the defendant are genuine and admit them as evidence without having to call the maker of the certificates.

[49] As for the plaintiffs' argument that LSY is a citizen by operation of law by virtue of her lawful adoption pursuant to s. 9 of the AA 1952 read together with s. 25A of the Act and arts. 14(1)(b) and s. 1(a) of Part II of the Second Schedule of the FC, I find that s. 9 of the AA 1952 does not construe or deem an adopted child as a child born to the adopter in lawful wedlock for purposes of arts. 14(1)(b) and s. 1(a) of Part II of the Second Schedule, Part II of the FC.

[50] In *Samuel Duraisingh*, after having thoroughly analysed sub-ss. (1) to (9) of s. 9 of the AA 1952, I had concluded:

> [77] Applying the rule *ejusdem generis* to the interpretation of s. 9 of the AA 1952, the general words in subsections 9(1) to (9) of the AA 1952 on the effect of an adoption, should be confined to things of the same kind, *ie*, the rights, duties, obligations and liabilities of the biological parents and the adoptive parents *vis-à-vis* the adopted child's future custody, maintenance and education; the rights of the Courts to make orders of maintenance, custody and access of the adopted child; the devolution of movable and immovable property following the death of the adopter or the adopted child; the disposition of movable and immovable property made inter vivos or by will; the prohibited degree of consanguinity between the adopted child and the adopter and his other children, and situations where the adopter or adopted child dies as a result of an actionable wrong.
>
> [78] Therefore, I find that based on the rule *ejusdem generis, it would be wrong for this Court to expand the interpretation of the words in s. 9 of the AA 1952 to construe or deem an adopted child as the child of the adopter born in lawful wedlock for purposes of its citizenship under Chapter III of the Federal Constitution.*
>
> …
>
> [80] In my view, the rule *expressio unius est exclusio alterius* applies to the interpretation of s. 9 of the AA 1952. On the natural and ordinary reading of the subsections in s. 9, I find that s. 9 confines the construing and deeming of the adopted child to be "born in lawful wedlock" of the adoptive parents to three situations only, namely:
>
> (i) the devolution of movable and immovable property following the death of the adopter or the adopted child or any other person;
>
> (ii) the disposition of movable and immovable property made *inter vivos* or by will (including codicil); and
>
> (iii) the death of the adopter or the adopted child as a result of an actionable wrong.
>
> [81] Section 9 of the AA 1952 does not expressly construe or deem an adopted child to be born to the adopter in lawful wedlock for purposes of the adopted child's citizenship under any written law. *Hence, I find that pursuant to the rule expressio unius est exclusio alterius, the effect of the adoption order*

and the post-adoption birth certificate issued under the AA 1952 does not include construing or deeming the adopted child to be born in lawful wedlock of the adoptive parents for purposes of citizenship under the Federal Constitution.

(emphasis added)

[51] The plaintiffs in *Samuel Duraisingh* did not appeal against the decision and neither have the Court of Appeal or the Federal Court in subsequent citizenship appeals before them, including in *CTEB*, held that the decision was wrong. Therefore, the decision in *Samuel Duraisingh* as regards adopted children and post-adoption birth certificates issued under the AA 1952 by the defendant in respect of legally adopted children for purposes of determining the children's citizenship under the FC is still good law.

[52] For these reasons, this court does not find that LSY is a citizen by operation of law by virtue of her lawful adoption pursuant to the adoption order read with ss. 9 and 25A of the AA 1952 and art. 14(1)(b) and s. 1(a) of Part II of the FC.

[53] Accordingly, the plaintiffs' prayer (3) of encl. 49 is dismissed.

Is LSY A Citizen By Operation Of Law Pursuant To Art. 14(1)(b) Of S. 1(e) And 2(3) Of Part II Of The Second Schedule Of The FC?

[54] Sections 1(e) and 2(3) of Part II of the Second Schedule of the FC reads:

1. Subject to the provisions of Part III of this Constitution, the following persons born on or after Malaysia Day are citizens by operation of law, that is to say:

(e) every person born within the Federation who is not born a citizen of any country otherwise than by virtue of this paragraph.

…

2(3) For the purposes of paragraph (e) of section 1 a person is to be treated as having at birth any citizenship which he acquires within one year afterwards by virtue of any provision corresponding to paragraph (c) of that section or otherwise.

[55] LSY was born after Malaysia Day. She was registered as a Malaysian citizen by the defendant in the register under the BDRA 1957 based on false information provided by the first plaintiff that LSY was the plaintiffs' biological child. The defendant had issued LSY a birth certificate under the BRDA 1957, which stated that she is a 'warganegara' (citizen).

[56] After the truth came to light, when LSY was 12 years old, that she is not the plaintiffs' biological child, the defendant amended LSY's original birth certificate to state that LSY was 'bukan warganegara' (non-citizen).

[57] By reason of the amendment of her citizenship status as 'bukan warganegara', LSY is now no longer a citizen of Malaysia.

[58] The fact that she was registered by the defendant after her birth as a Malaysian citizen, *albeit* based on false information provided by the first plaintiff, means that it would have been legally impossible for her, to have acquired within one year after her birth, the citizenship of any other country by virtue of any provision corresponding to s. 1(c) of Part II of the Second Schedule of the FC or otherwise.

[59] Therefore, I find that LSY, who was a Malaysian citizen since her birth until it was revoked by the defendant when she was 12 years old, could not have acquired and did not acquire the citizenship of any other country within one year from her birth. Thus, she is a citizen of Malaysia by operation of law pursuant to art. 14(1)(b) and s. 1(e) and s. 2(3) of Part II of the Second Schedule of the FC.

Decision

[60] Accordingly, this court hereby declares that LSY is a citizen of Malaysia by operation of law pursuant to art. 14(1)(b) and s. 1(e) and s. 2(3) of Part II of the Second Schedule of the FC.

[61] It is hereby ordered that the defendant registers LSY as a citizen of Malaysia and reissues her birth certificate (Register No.: 000XXXX, Serial No.: 00XXXXA) dated 6 August 2016 stating that her citizenship status on the birth certificate as "Warganegara" within 14 days from the date of service of this order on the defendant.

[62] It is further ordered that the requirement of personal service of this order is dispensed with, and that service of this order be effected on the National Registration Department of Malaysia by way of registered post.

[63] There is no order as to costs.